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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DOUGLAS EDWARD MCKENZIE,

Defendant and Appellant.

F073942

(Super. Ct. Nos. MCR047554,  
MCR047692, MCR047982)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Madera County. Ernest J. LiCalsi, Judge.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, R. Todd Marshall and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Franson, Acting P.J., Smith, J. and Meehan, J.

Defendant Douglas Edward McKenzie was convicted by guilty plea of several drug-related charges in three cases. On appeal, he contends (1) he was entitled to three more days of custody credit, and (2) the trial court erred in staying prior felony drug conviction enhancements and prior prison term enhancements. We modify the judgment and affirm as so modified.

### **BACKGROUND**

On November 4, 2014, defendant pled guilty to charges in three cases and admitted the special allegations, as follows.

In case No. MCR047554, defendant pled guilty to transportation or sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and misdemeanor possession of narcotics paraphernalia (Health & Saf. Code, § 11364.1). He admitted having suffered four prior felony drug convictions (Health & Saf. Code, § 11370.2, subd. (c)) and having served three prior prison terms (Pen. Code, § 667.5, subd. (b)).<sup>1</sup>

In case No. MCR047692, defendant pled guilty to possession for sale of methamphetamine (Health & Saf. Code, § 11378) and transportation or sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)). He admitted committing these offenses while on bail or release (§ 12022.1).

In case No. MCR047982, defendant pled guilty to possession for sale of methamphetamine (Health & Saf. Code, § 11378). He admitted having suffered the same four prior felony drug convictions (Health & Saf. Code, § 11370.2, subd. (c)) and having served the same three prior prison terms (§ 667.5, subd. (b)), as admitted in case No. MCR047554.

The same day, the trial court granted defendant probation in all three cases and ordered him to attend drug court.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

On March 3, 2016, the Madera County Probation Department filed a first amended petition for revocation of probation in all three cases.

On April 1, 2016, defendant admitted the probation violations.

On June 1, 2016, the trial court denied probation and sentenced defendant to a split term of 22 years—10 years to be served in county jail and 12 years on mandatory supervision (§ 1170, subd. (h)(5)(A)).

On June 16, 2016, defendant filed a notice of appeal in all three cases.

## **DISCUSSION**

### ***I. Presentence Custody Credits***

Defendant contends he is entitled to three more days of conduct credit in case No. MCR047554, and thus his current sentence is unauthorized.<sup>2</sup> The People counter that defendant was actually granted one extra day. Defendant replies that the People's contention is based on the incorrect presumption that credits are not calculated cumulatively. We agree with defendant.

For purposes of calculating presentence conduct credit, time is cumulative. (*People v. Culp* (2002) 100 Cal.App.4th 1278, 1284.) Therefore, a defendant's noncontinuous periods of presentence custody must be aggregated to calculate the conduct credit earned. (*Id.* at p. 1283.) Section 4019 provides that a person confined prior to sentencing may earn two days of conduct credit for every two days served. (*People v. Chilelli* (2014) 225 Cal.App.4th 581, 588.) Here, because defendant was confined for an aggregate of 118 actual days for noncontinuous periods prior to sentencing, he earned 118 days of conduct credit, for a total of 236 days of credit.

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<sup>2</sup> Defendant attempted to resolve this issue in the trial court by sending a letter to the court.

## ***II. Status Enhancements***

The parties agree that the trial court imposed the same seven status enhancements—four prior felony drug conviction enhancements and three prior prison term enhancements—in both case No. MCR047554 and case No. MCR047982. In the latter case, the trial court orally imposed the enhancements and then stayed them pursuant to section 654.<sup>3</sup> We agree the enhancements should have been imposed only once, were improperly stayed, and must be stricken.

Status enhancements go to the nature or status of the defendant in general, such as his criminal history of prior convictions and prior prison terms. (*People v. Gokey* (1998) 62 Cal.App.4th 932, 936 [“Sentence enhancements for prior prison terms are based on the defendant’s status as a recidivist, and not on the underlying criminal conduct, or the act or omission, giving rise to the current conviction.”]; *People v. Edwards* (2011) 195 Cal.App.4th 1051, 1058 [“The enhancements provided for in section 11370.2 are status enhancements, in that they pertain to defendant’s status as a drug conviction recidivist.”].) Status enhancements are not specifically attached to certain offenses, but are instead added one time only to the total aggregate sentence for determinate terms, regardless of the number of counts. (*People v. Williams* (2004) 34 Cal.4th 397, 402 [status enhancements “ ‘have nothing to do with particular counts but, since they are related to the offender, are added only once as a step in arriving at the aggregate sentence’ ”]; *People v. Acosta* (2016) 247 Cal.App.4th 1072, 1074 [status enhancements “attach to the aggregate sentence irrespective of whether that sentence is pronounced for multiple convictions in the same case or in multiple cases” and “can be imposed only once on the aggregate sentence”].) A status enhancement is not subject to the one-third term limitation of section 1170.1, subdivision (a), and must be imposed at full term.

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<sup>3</sup> The sentencing minute orders state that the enhancements were stricken, not stayed.

(§ 1170.1, subd. (a) [“the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for *applicable enhancements for prior convictions, prior prison terms, and Section 12022.1*... [t]he subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any *specific enhancements* applicable to those subordinate offenses”], italics added; § 1170.11 [“[a]s used in Section 1170.1, the term ‘specific enhancement’ means an enhancement that relates to the circumstances of the crime”]; *People v. Beard* (2012) 207 Cal.App.4th 936, 941-942 [section 1170.1’s reference to *specific enhancements* is not a reference to *status enhancements*; “[s]ection 1170.1, subdivision (a) applies the one-third limit to ‘specific enhancements applicable to those subordinate offenses’ ”].)

Here, the status enhancements should have been imposed only once to the five-year aggregate term in the three cases. The second set of status enhancements should not have been imposed or stayed (as the trial court orally stated), and we will order them stricken.

### **DISPOSITION**

The judgment is modified as follows: In case No. MCR047554, the number of conduct credits is increased to 118, for a total of 236 days of credits. In case No. MCR047982, the four prior felony drug conviction enhancements (Health & Saf. Code, § 11370.2, subd. (c)) and the three prior prison term enhancements (Pen. Code, § 667.5, subd. (b)) are stricken. The trial court is directed to modify the sentencing minute orders to reflect (1) that the total number of credits is 236 days and (2) that the status enhancements are imposed only once on the aggregate term. The court shall forward certified copies of the amended orders to the appropriate entities. As so modified, the judgment is affirmed.